

1986

State of Utah v. Howard Rodney Milligan : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

David L. Wilkinson; Roger Blaylock; Attorneys for the Plaintiff.

Howard Rodney Milligan; In Propria Persona.

Recommended Citation

Brief of Appellant, *Utah v. Milligan*, No. 860027.00 (Utah Supreme Court, 1986).
https://digitalcommons.law.byu.edu/byu_sc1/682

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

DOCUMENT

K F U

45.9

.S9

DOCKET NO. 86 0027

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH)	CASE NO. 860027
)	
Plaintiff/Respondent)	CR CATEGORY NO. 2
)	
vs)	
)	
HOWARD RODNEY MILLIGAN)	BRIEF OF APPELLANT
)	
Defendant/Appellant)	

Appeal from an Order
of the Salt Lake County Third District Court

David L. Wilkinson
Roger Blaylock
Attorneys for the Plaintiff

Howard Rodney Milligan
4265 Morris Street
Salt Lake City, Utah 84119
In Propria Persona

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH)	CASE NO. 860027
)	
Plaintiff/Respondent)	
)	
vs)	
)	
HOWARD RODNEY MILLIGAN)	BRIEF OF APPELLANT
)	
Defendant/Appellant)	

Appeal from an Order
of the Salt Lake County Third District Court

David L. Wilkinson
Roger Blaylock
Attorneys for the Plaintiff

Howard Rodney Milligan
4265 Morris Street
Salt Lake City, Utah 84119
In Propria Persona

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	Page (a)
STATEMENT OF ISSUES ON APPEAL.....	Page (a)
CONSTITUTIONAL PROVISIONS.....	Page (a)
STATEMENT OF THE CASE.....	Page (1)
RELIEF SOUGHT ON APPEAL.....	Page (2)
SUMMARY OF ARGUMENTS.....	Page (2)
ARGUMENT:	
POINT 1. RIGHT TO LOCOMOTION.....	Page (2)
POINT 2. WITNESSES.....	Page (4)
POINT 3. AUTHORITY OF CLASS 2 OFFICER.....	Page (6)
POINT 4. CRUEL AND UNUSUAL PUNISHMENT.....	Page (5)
POINT 5. JUSTICE COURTS INCREASE OF FINE.....	Page (7)
CONCLUSION.....	Page (8)

TABLE OF AUTHORITIES

DECLARATION OF INDEPENDENCE - July 4, 1776.....	Page 3
Deuteronomy 1:16-17.....	Page 7
Deuteronomy 19:15.....	Page 4
Deuteronomy 19:21.....	Page 5
Doctrine & Covenants 98:4-7.....	Page 4
Doctrine & Covenants 101:77,79.....	Page 6
Doctrine & Covenants 128:3.....	Page 4
Doctrine & Covenants 134:1,2.....	Page 2
Exodus 21:23-25.....	Page 5
II Samuel 23:3.....	Page 4
Utah Code of Criminal Procedures 77-10-6,77-10-6(2),(a).....	Page 6

CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment VI.....	Page 5
Utah Constitution, Article I, Paragraph 9.....	Page 5
Utah Constitution, Article I, Paragraph 12.....	Page 5

STATEMENT OF ISSUES ON APPEAL

Issues on appeal pertain to law only. Defendant relies strictly on Constitutional and Scriptural law. Inasmuch as he lives Scriptural law, only such can be included.

TO THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH)	CASE NO. 85-1155
)	
Plaintiff/Respondant)	
)	
vs)	
)	
HOWARD RODNEY MILLIGAN)	BRIEF OF APPELLANT
)	
Defendant/Appellant)	

STATEMENT OF THE CASE

Defendant was cited on January 8, 1985, by Glosper L. Bowman, a Category 2 Peace Officer, Utah Technical College, for:

(1) Operating a motor vehicle without a valid Utah Driver's License.

(2) Failure to appear.

This case was tried before Judge Dan K. Armstrong, Third Precinct, 4780 South 4015 West, Kearns, Utah, Judge Dan K. Armstrong, presiding.

Defendant was found guilty on both counts and sentenced to 15 days in jail, 150.00 dollars fine and costs on operating a motor vehicle without a valid Utah Driver's License; the costs being 6.00 dollars. Sentence on the Failure to Appear was 5 days in jail, a 50.00 dollar fine and four dollars costs, for a total of 20 days in jail, 210.00 dollars in fines and 10.00 dollars costs.

Defendant appealed to the Third District Court of Salt Lake County for a trial de novo.

Trial was held on November 8, 1985, in the Third District Court of the County of Salt Lake, before the Honorable Kenneth Rigtrup.

The Defendant was found guilty of both counts by a four-person jury. Judge Rigtrup set sentencing for the 6th day of December and upheld the total 20-day sentence and the two hundred dollar fine. The Judge dismissed the 6.00 dollar and the 4.00 dollar Post Fee.

RELIEF SOUGHT ON APPEAL

Defendant seeks to have the charges dismissed, and fines and sentences dismissed, as no one has testified to the commission of a crime for which a person could be reasonably confined or fined.

SUMMARY OF ARGUMENT

Point 1. Rights to locomotion and the responsibility of Government to extend and protect rights rather than restrict them.

Point 2. Insufficiency of witnesses.

Point 3. Cruel and unusual punishment and excessive fines.

Point 4. Excessive abuse of authority or lack of authority.

Point 5. Excessive increase of fine above Bail Schedule.

ARGUMENT 1

"We believe that governments were instituted of God for the benefit of man, and that he holds men accountable for their acts in relation to them both in making laws and administering them for the good and safety of society.

"We believe that no government can exist in peace, except such laws are framed and held inviolate as will secure to each individual the free exercise in conscience, the right in control of property, and the protection of life." Doctrine and Covenants 134:1,2.

Defendant, in the course of his activities on January 8, 1985, was, in obedience to the law, stopped at the semaphore, the light being red at the time and the weather being cold, snowy and slick. Defendant was rudely intruded upon in the form of another vehicle sliding out of control toward his vehicle. While Defendant was still

stopped and unable to move his vehicle due to slick conditions of the roadway, he was struck on the left side of his vehicle just behind the operator's door. Officer Bowman was the investigating officer and determined that the Defendant was not the offending party to the action. The Defendant was operating his vehicle in a responsible manner, being careful not to create a threat or danger to the life, liberty or property of his passengers and/or anyone else who should happen upon the highways.

Defendant exercised his right in control of his property (his van) being at all times mindful of his responsibilities and duties toward his fellow man.

"We hold these truths to be self evident, that all men are created equal, that they are endowed by their creator with certain unalienable Rights, that among these are life, liberty and the Pursuit of Happiness. That to secure these Rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."
Declaration of Independence, July 4, 1776

Defendant's question: Whose secured Rights was Officer Bowman protecting when he cited the Defendant for not having a valid Utah Driver's License, while he was in the process of exercising his right to move his property from one point to another upon the highways of this nation on the 8th day of January, 1985?

"And now, verily I say unto you concerning the laws of the land, it is my will that my people should observe to do all things whatsoever I command them.

"And that law of the land that is Constitutional, supporting that principal of Freedom in maintaining rights and privileges, belongs to all mankind, and is justifiable before me.

"Therefore, I, the Lord justify you,...in befriending that law which is the Constitutional law of the land.

"And as pertaining to law of man, whatsoever is more or less than this cometh of Evil." Doctrine and Covenants 98:4-7.

"He who ruleth over man must be just, ruling in the fear of God." II Samuel 23:3

Defendant's question: Where rights are secured, can there be arbitrary rule making or Legislation that in affect would remove those rights? Would the Legislature that passed those laws be ruling justly and in the fear of God?

ARGUMENT 2

"One witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth at the mouth of two witnesses, or at the mouth of three witnesses, shall the matter be established." Deut. 19:15

"Who can at any time when called upon certify to the same, that in the mouth of two or three witnesses every word may be established." Doctrine and Covenants 128:3

"...the accused shall enjoy the right...to be confronted with the witnesses against him..." United States Constitution, Amendment VI

"...the accused shall have the right to be confronted by the witnesses against him..." Utah Constitution, Article 1, Paragraph 12

Defendant's question: If four authorities clearly state witnesses must be two or more, can a Judge justly rule that one witness is lawfully, legally and morally sufficient?

Officer Mowman, in his testimony before the jury, admitted that he did not witness the Defendant driving the vehicle. If Officer Bowman did, in fact, not witness the Defendant driving the vehicle, upon what authority did he issue a citation?

ARGUMENT 3

"Excessive fines shall not be imposed, nor cruel and unusual punishment be inflicted." Utah Constitution, Article 1, Paragraph 9

"...but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot..." Deut. 19:21

"...and if any mischief follow, then thou shalt give life for life...eye for eye, tooth for tooth, hand for hand, foot for foot...burning for burning, wound for wound, stripe for stripe." Exodus 21:23-25

Defendant's question: According to the law of our father and the founders of our Constitution, must I give up my Liberty when I have deprived no one else of theirs? Must I give up my property when I have not deprived anyone of theirs?

"According to the laws and Constitution of the people, which I have suffered to establish, and should be maintained for the rights and protection of all flesh, according to just principles;...therefore, it is not right that any man should be in bondage one to another."
Doctrine and Covenants 101:77,79

Defendant's question: By what just principle can it be justified to commit this Defendant to the loss of his life, his liberty and/or his property for the criminal act of exercising his right to move his property from one point to another?

ARGUMENT 4

"Category II peace officers shall have total peace officer authority when on duty and when acting in relation to the responsibilities of the peace officers agency; provided, however, category II peace officers shall have the powers of a category I peace officer over felonies or misdemeanors committed within their presence involving danger to persons or property." .Utah Code Annotated 77-10-6(2)(a)

Defendant's question: Where in the testimony of Officer Bowman does it infer that the Defendant was or is a danger to persons or property? Officer Bowman represented himself to be a Class I peace officer during his testimony before the jury when, in fact, at the time of the citation, he was, in fact, a class II peace officer.

Defendant's question: Did Officer Bowman, being a class II peace officer, in fact have the authority to cite the Defendant?

ARGUMENT 5

Defendant's question: Where rights are secured, can there be arbitrary rule making or legislation that would in effect remove these rights? (See *Miranda vs. Arizona*, 384 US 436, 491.)

The fine, above the amounts specified in the Bail Schedule for Salt Lake County, is Thirty and no One Hundred Dollars plus three dollars assessment for whatever purpose. The Justice Court increased that fine considerably to Two Hundred Dollars plus Three Dollars assessment, merely because the Defendant demanded a Trial by Jury, thus, in effect, charging the defendant for the expenses of the Trial, which, under the Seventh Amendment to the Constitution of the United States, is an inalienable Right.

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved..." U. S. Constitution, Seventh Amendment

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."
U. S. Constitution, Eighth Amendment

In the *Joseph Wisden vs. Nephi City* case, as determined by the Utah Supreme Court in a 1985 decision, held that the Court could not increase the bail because Defendant demanded a Trial by Jury.

The Bail Schedule does not have reference to incarceration.

CONCLUSION

According to just laws and principles, Defendant has not committed a crime against his fellow man. Defendant has exercised great care to protect and preserve the rights of others and has only been exercising his inalienable right to mobility and free exercise of

liberty. Defendant has the absolute right to be left alone by an unjust and arbitrary agency of man.

Defendant hereby claims the right to have the charges dismissed and be relieved of all arbitrary fines and jail sentences.

"And I charged your judges at that time, saying, Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him.

"Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's; and the cuase that is to hard for you, bring it unto me, and I will hear it." Deuteronomy 1:16-17

Dated this 14th day of July, 1986.

Respectfully Submitted,

Howard Rodney Milligan
Howard Rodney Milligan
In Propria Persona

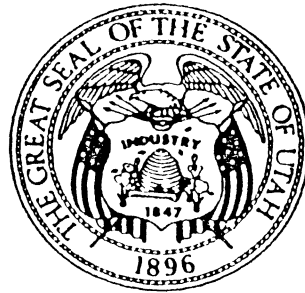
CERTIFICATE OF MAILING

I, the undersigned, hereby certify that I mailed postage paid a true and correct copy of the foregoing document on this 14th day of July, 1986, to David L. Wilkinson and Roger Blaylock at the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114.

Sherry Evans
Sherry Evans

State of Utah

Department of Public Safety



The Council on Peace Officer Standards and Training

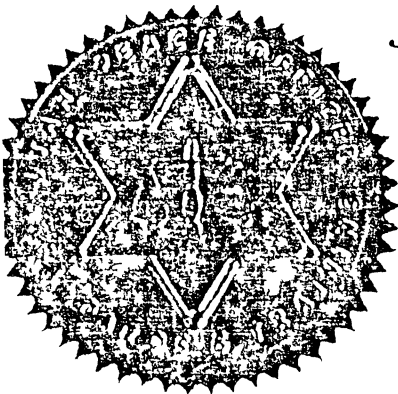
Hereby presents the


Basic Certificate - Category Two Peace Officer to

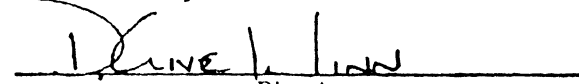
Gloster L. Bowman

*for having fulfilled the requirements as set forth in the minimum
Standards and Training Act for Peace Officers in the State of Utah*

In testimony whereof we sign this 7th day of December, 1982.




Council Chairman


Director



State of Utah

Department of Public Safety



The Council on Peace Officer Standards and Training
Heretby presents the

Basic Certificate to

GLOSPER L BOWMAN

*for having fulfilled the requirements as set forth in the minimum
Standards and Training Act for Peace Officers in the State of Utah
In testimony whereof we sign this 17th day of July, 1985.*



Harold Campbell
Council Chairman

Lee E. Jeannotte
Director

6/26/86

STATUTE	DESCRIPTION	FALL	ASSESSMENT	TOTAL	COMMENTS
41-1-142	USING PLATE REGISTERED TO ANOTHER	40.00	NA	40.00	
41-1-142(c)	IMPROPER REGISTRATION	35.00	NA	35.00	
41-1-185	EXPIRED CAMPER REGISTRATION	20.00	NA	20.00	SUSPEND \$10.00 ON PROOF
*** OPERATOR'S AND CHAUFFEUR'S LICENSE ACT ***					
<u>41-2-2</u>	<u>DRIVING WITHOUT LICENSE</u> <u>NO VALID UTAH LICENSE</u>	<u>30.00</u>	3.00	33.00	suspend \$10.00 on proof
41-2-6	NO CHAUFFEUR'S LICENSE	35.00	3.00	38.00	suspend \$10.00 on proof
41-2-7	VIOLATION OF INSTRUCTION PERMIT (LEARNER PERMIT)	20.00	3.00	23.00	
41-2-9	VIOLATING LICENSE RESTRICTIONS (NOT WEARING GLASSES)	30.00	3.00	33.00	
41-2-9	DRIVING OUTSIDE RESTRICTED LICENSE	175.00	6.00	181.00	
41-2-11.5	NO MOTORCYCLE LICENSE	30.00	3.00	33.00	suspend \$10.00 on proof
41-2-13	FAILURE TO REPORT CHANGE OF ADDRESS	5.00	NA	5.00	
41-2-15	FAILURE TO PRODUCE LICENSE	30.00	3.00	33.00	suspend or dismiss on proof
41-2-16	EXPIRED DRIVER'S LICENSE	30.00	3.00	33.00	suspend \$10.00 on proof
	NEVER OBTAINED A LICENSE	55.00	4.00	59.00	
41-2-22	OWNER RESPONSIBLE FOR NEGLIGENCE OF MINOR				appearance required
41-2-23	FALSIFICATION OF LICENSE	150.00	NA	150.00	appearance required